IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO: 21997 of 2004

Between:

M/s. Aster Tele Services Pvt Ltd., R.O. at E-67, 4th

Cresent, Sainkpuri, Secunderabad-14, rep by CEO, Mr.

A. Srinivas Prasad.

... PETITIONER

AND

1 M/s. Electronics Corporation of India Ltd., (A Government

of India Enterprise), Antenna Products
Division (Projects), Industrial Development ARea, EDIL

Post, Hyderabad, rep by Senior Deputy General Manager
2 State Bank of India, (SIB) Branch, Saifabad, Hyderabad,

rep by Assistant General Manager

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court

may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the impugned notice
No. ECIL/APD/IMM/Towers/Aster dated 20-10-2004 of the 1st respondent in directing the petitioner's company to give its acceptance on or before 23-10-2004 and extend the validity of quotation for the Tender or else forfeiture of the EMD furnished by the petitioner company by way of bank Guarantee No. 0731504BG 0000320, dated 08-09-2004 for an amount of Rs. 2, 00,000/- and also the subsequent letter dated11-11-2004 issued by the 2nd respondent demanding the petitioner company to provide sufficient funds in the account of the petitioner's company to satisfy the claim of the respondent No.1 as illegal, arbitrary, unfair and contrary to Articles 14 & 19 (1)(g) of the Constitution of India and consequently declare the Tender Notification No. ECIL APD: DDT:FAB:)81, dated 01-11-2004 issued by the 1st respondent for the same work contract as illegal and against the principles of natural justice.

Counsel for the Petitioner: MR.V.V.LAKSHMI NARAYANA

Counsel for the Respondents: MR.DANTU.SRINIVAS

The Court, at the admission stage, made the following:

O R D E R:

Heard both the counsel.

This writ petition is filed to declare the impugned notice No.ECIL/APD/IMM/TOWERS ASTER dated 20.10.2004 of the 1st respondent in directing the petitioner – company to give its acceptance on or before 23.10.2004 in pursuance of its offer or in default imposing the clause of forfeiture of E.M.D. amount as illegal and arbitrary.

3. The brief facts necessary for the disposal of the writ petition are that the petitioner is a company involved in execution of fabrication, installation, civil foundations and electrical works. While so, the 1st

respondent issued tender notification on 1.9.2004 for execution of certain works. Pursuant to the said notification, the petitioner submitted its quotation along with E.M.D. After negotiations with regard to modalities of execution of work, the 1st respondent issued letter dated 20.10.2004 accepting the quotation submitted by the petitioner and requested the petitioner to communicate its acceptance on or before 23.10.2004, so that work order can be placed on it. In the said letter it was further indicated that on failing to file acceptance, it would be presumed that the petitioner is no more interested to take up the works and all necessary action will be initiated including forfeiture of E.M.D. submitted by it. It is stated that on 20.10.04 itself the petitioner has addressed a letter stating that as per the general conditions of contract at point No.2.09 the forfeiture of E.M.D. can be done only on issuing of work by the 1st respondent and default in commencing the same. But there is no response from the 1st respondent. However, on 11.11.2004 the 1st respondent addressed letter to the 2nd respondent – Bank invoking the bank guarantee i.e., E.M.D. amount. It is further stated that the 1st respondent issued another tender notification on 1.11.2004 for the very same works. Aggrieved by the issuance of another tender notification and forfeiture of the E.M.D. amount, the petitioner filed this writ petition.

4. Even though so many reliefs are sought in the writ petition, ultimately at the time of arguments, the counsel for the petitioner submitted that the petitioner would be satisfied if its request for refund of E.M.D. is considered. He further submitted that the petitioner is no more interested in executing the work.

5. The learned counsel for the petitioner submitted that there is no clause in the tender conditions that E.M.D. amount will be forfeited on the failure to file acceptance within the stipulated time. He further submitted that as per point No.2.09 the forfeiture of E.M.D. can be done only on issuing of work by the 1st respondent and in default in

commencing the work.

6. The learned counsel for the 1st respondent fairly accepted the above submission of the counsel for the petitioner. But however he contended that because of the attitude of the petitioner in not timely responding to the offer of the 1st respondent, undue delay and financial loss has been caused to the 1st respondent - organization and the

1st respondent – organization is forced to issue fresh tender notification and, therefore, the petitioner deserves forfeiture of the E.M.D. amount.

7. After hearing both the counsel, the counsel for the petitioner, on instructions, submitted that the petitioner is ready to forego some amount towards expenses incurred by the 1st respondent in issuing fresh notification.

8. As conceded by the counsel for the 1st respondent, there is no clause in the tender conditions that on failure to file acceptance of readiness by the successful bidder within stipulated date, the E.M.D. will be forfeited. But however, such forfeiture can be imposed, as per point NO.2.09 of the tender conditions, only on failure in execution of entrusted worked. That stage has not yet reached.

9. But, in view of the above facts and circumstances, because of the conduct of the petitioner in not timely responding to the offer of the 1st respondent, undue delay in execution of works has been caused and also necessitated the 1st respondent to issue fresh tender notification. Further the counsel for the petitioner also, on instructions, submitted that the petitioner is ready to forego some amount towards the expenditure incurred by the 1st respondent in issuing fresh tender notification. Therefore, I feel it expedient to direct the petitioner to pay

an amount of Rs.25,000/- to the 1st respondent towards expenses incurred in issuing fresh tender notification, in the interest of justice.

10. Accordingly the petitioner shall pay an amount of Rs.25,000/- to the 1st respondent and on such payment, the 1st respondent shall return the E.M.D. amount deposited by the petitioner.

11. With the above direction the writ petition is disposed of. No costs.

N. V. RAMANA, J

02.12.2004

AVS/NSR

To:

1 The Senior Deputy General Manager,

M/s. Electronics Corporation of India Ltd., (A Government

of India Enterprise), Antenna Products
Division (Projects), Industrial Development Area, EDIL

Post, Hyderabad,

2 The Assistant General Manager,

State Bank of India, (SIB) Branch, Saifabad, Hyderabad,

3 Two C.D. Copies.